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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,286	03/25/2004	Ralph L. Holzhaus II	7924-A-2	2168

7590 04/17/2007  
Jordan M. Meschkow  
Meschkow & Gresham, PLC  
Suite 409  
5727 North Seventh Street  
Phoenix, AZ 85014

EXAMINER
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JOHNSON, JERROLD D

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/811,286

Applicant(s)

HOLZHAUS, RALPH L.

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on telephonic election dated 13 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 16-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 25 March 2004.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species: Figs 1-8; Figs. 9 and 10; Figs. 11 and 12; Figs. 13 and ; Figs. and 14.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

During a telephone conversation with Jordon Meschkow on 13 April 2007 a provisional election was made without traverse to prosecute the invention of Figs. 1-8, claims 1-13, 15, 19 and 20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14 and 16-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4,5 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by DeLaura et al. US 4,384,604.

Re claims 1 and 19-21 DeLaura discloses the containment system comprising the open-ended flexible cylindrical tube (see Fig. 2), first closure device 18, and second closure device 14.

Re claim 2, note the polymeric material (polyethylene plastic).

Re claims 4 and 5, note the drawstring/hem arrangement at both ends of the cylindrical tube.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeLaura et al. US 4,384,604 in view of Blackburn et al. US 4,799,520 and/or Baumler US 5,323,558 and Examiner Official Notice. DeLaura does not disclose coated paper.

Blackburn in col. 5 discusses different materials such as paper, fabric and plastic sheet material that are suitable for a containment system for a Christmas tree.

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Blackburn does not disclose that the paper is coated to be resistant to moisture, but it is clear from Blackburn that there are numerous materials that are suitable (sufficient strength) for the containment system of this type. Baumler in Col. 6, line 45 describes the material for the containment system to be "moisture tight", and in col. 6, line 58 through col. 7 line 6 also describes the myriad of materials that may be used, including paper.

Coated paper is notoriously well known in this art to be both high in strength and moisture proof, and the Examiner takes Official Notice of this fact.

Accordingly, with the teachings of Blackburn and Baumler in mind, one of ordinary skill in the art would recognize the suitability of coated paper, among other materials, as possessing the necessary strength and moisture resistance necessary for a containment system of this type.

Claims 6-9, 11,12, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeLaura et al. US 4,384,604 in view of Cicero US 2,616,467, Falk US 2003/0159958 and Examiner Official Notice.

DeLaura discloses in col. 2, lines 34 and 35 the desire of carrying a tree in the containment system without dropping needles. DeLaura does not disclose end pieces.

Cicero discloses a containment system bag with drawstrings where a flexible end piece 32 is disposed proximate to an opening to prevent the contents of the bag from passing out the opening (col. 2, lines 1-3).

The Examiner takes Official Notice that substantially circular end pieces in bags having a drawstring closure are notoriously commonplace, and have been notoriously commonplace for at least 20 years. The Examiner personally has at least 4 cylindrical bags of this type that have drawstrings with circular end pieces. The bags are storage bags for outdoor related gear: tents and sleeping bags. Circular shaped end pieces are the logical choice for bags that are cylindrical and have circular openings, as the shape of the end piece matches that of the opening as well as the cross-section of the bag.

With respect to the material of the end piece being of a different material than the remaining portion of the containment system, Falk provides the necessary teaching that the end portion of a containment system that is under the most stress should be of a reinforced material.

Accordingly, it would have been obvious to one of ordinary skill in the art to provide the containment system of DeLaura with an end piece of flexible material, and to make that end piece from a material having a suitable strength (such as a stronger reinforced material as suggested by Falk) for the stresses it will need to withstand.

Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeLaura et al. US 4,384,604 in view of Moore US 5,590,775.

DeLaura does not disclose a handle.

Moore discloses such a handle for the ease of transport of the containment system.


Accordingly, it would have be obvious to one of ordinary skill in the art to provide the containment system of DeLaura with a handle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JDB

  
Mickey Yu  
Supervisory Patent Examiner  
Group 37C0